



2015-030

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Rodney Christian
Mayor, City of Odenville
Post Office Box 113
Odenville, Alabama 35120

Municipalities – Conflicts of Interest
– Council Members – St. Clair
County

The towing company of a councilmember who is chairman of the police committee may be placed in rotation for dispatch by police if the councilmember does not participate in the discussion of the consideration of, or the vote on, the issue by the city council or committee.

Dear Mayor Christian:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Odenville.

QUESTION

May a member of the Odenville City Council, who is chairman of the police committee and owns a towing company, provide rotation wrecker service for the police department?

FACTS AND ANALYSIS

Sections 11-43-12, 11-43-53, and 11-43-54 of the Code of Alabama are the primary conflict-of-interest provisions applicable to municipal officers and employees. Section 11-43-12 states as follows:

(a) No alderman or officer or employee of the municipality shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which ***is paid from the treasury***, nor shall any member of the council or officer of the municipality be surety for any person having a contract, work or business with such municipality for the performance of which a surety may be required.

(b) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not less than \$50.00 nor more than \$1,000.00, and may also be sentenced to hard labor for the county for not more than six months.

ALA. CODE § 11-43-12 (2008) (emphasis added).

Section 11-43-53 provides as follows:

(a) No member of any city or town shall, during the time for which he has been elected, be appointed to any municipal office which shall be created or the emoluments of which shall be increased during the term for which he shall have been elected; ***nor shall he be interested, directly or indirectly, in any contract or job for work or material, or the profits thereof or services to be performed for the corporation, except as provided in this title.***

(b) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than \$50.00 nor more than \$1,000.00, and may also be sentenced to hard labor for the county for not more than six months.

ALA. CODE § 11-43-53 (2008) (emphasis added).

Section 11-43-54 states as follows:

No councilman shall be entitled to vote on any question in which he, his employer or employee has a special financial interest at the time of voting or was so interested at the time of his election. For violating this section or section 11-43-53, a councilman may be removed.

ALA. CODE § 11-43-54 (2008).

It is noted that the language on the source of funds emphasized in section 11-43-12 above is not present in section 11-43-53. Nonetheless, this Office has historically read these statutes together. As this Office has explained, “[s]ections 11-43-12 and 11-43-53 of the Code of Alabama prohibit a city council member from being financially interested in any business or contract, the expense of which *is paid from the treasury.*” Opinion to Honorable David A. McDowell, City Attorney, City of Prattville, dated November 19, 2001, A.G. No. 2002-065 at 3 (emphasis added). *Accord*, opinions to Honorable Clarence F. Rhea, Town Attorney, Town of Ridgeville, dated August 27, 1991, A.G. No. 91-00365 at 2; Honorable Boyd Whigham, Town Attorney, Town of Clayton, dated November 9, 1981, A.G. No. 82-00070 at 5.

The different treatment of these statutes depending on the source of funds is well illustrated in our opinions on the receipt of grant funds. For example, this Office has observed that, under these sections, “when a city serves as a sponsor for a summer food service program and *federal funds pass through the municipal treasury, a council member is statutorily prohibited* from serving as the administrator of the program. Opinion to Honorable Stan Thornton, Attorney, City of Talladega, dated June 9, 1992, A.G. No. 92-00299.” Opinion to Honorable Milton C. Davis, Attorney, Tuskegee City Council, dated June 12, 2002, A.G. No. 2002-254 at 3 (emphasis added). The *Davis* opinion went on, stating that, conversely, under the sections, “when a town serves as a public sponsor for a transportation facility and *no municipal or federal funds are appropriated from or pass through the municipal treasury, there is no statutory prohibition* against a council member operating such a facility. . . . Opinion to Honorable Clarence F. Rhea, Attorney, Town of Ridgeville, dated August 27, 1991, A.G. No. 91-00365.” *Davis* at 3 (emphasis added).

This Office has not applied the municipal-funds limitation to section 11-43-54, however, reading that provision more broadly. Therefore, even where no such funds are involved, this Office has advised that the municipal officer or employee must comply with that section. This Office recently reached that conclusion in addressing the similar issue of a town's leasing of surplus real property to an employee, stating as follows:

This Office has explained that the source of funds must also be considered in a section 11-43-12 analysis. Opinion to Honorable Barbara Walden, City Clerk/Treasurer, City of Boaz, dated September 27, 2004, A.G. No. 2004-223. That opinion concluded that a city council member's mother-in-law could contract with a nonprofit organization to renovate a building for a community center, although she would be paid from funds donated to the nonprofit by the city. The *Walden* opinion reasoned that "[t]his section applies to contracts paid for with public funds, not funds of a private organization." *Id.* at 3. Similarly, in a lease or sale of land by a city to an employee, *payment is made, not from the municipal treasury, but from the employee's funds. Therefore, this Office has repeatedly stated that a city may sell real property to the mayor and a council member if they do not participate in the discussion of and do not vote on the sale.* Opinions to Honorable Jeffrey C. Smith, Attorney, Town of Brookwood, dated March 29, 2002, A.G. No. 2002-192; Honorable Keith A. Howard, City Attorney, Town of Wetumpka, dated October 19, 1998, A.G. No. 99-00008; Honorable Billy J. Blackmon, Mayor, City of Ozark, dated May 28, 1993, A.G. No. 93-00194; Honorable J. E. White, Mayor, Town of Hayden, dated June 10, 1988, A.G. No. 88-00327; Honorable C. P. Guin, Mayor, Town of Guin, dated March 22, 1974.

Opinion to Honorable Timothy Prevatt, Mayor, Town of Avon, dated September 9, 2013, A.G. No. 2013-067 at 2 (emphasis added).

This Office understands that, here, individuals having their vehicles towed pay wrecker fees to the company dispatched to perform the towing and that no funds are exchanged between the City of Odenville and the towing companies. Accordingly, the towing company of a councilmember who is chairman of the police committee may be placed in rotation if the councilmember does not participate in the discussion of the consideration of, or the vote on, the issue by the town council or committee.

This Office does not opine on ethical issues and advises you to seek an opinion from the Alabama Ethics Commission.

CONCLUSION

The towing company of a councilmember who is chairman of the police committee may be placed in rotation for dispatch by police if the councilmember does not participate in the discussion of the consideration of, or the vote on, the issue by the town council or committee.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH

Chief, Opinions Division

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